IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2913 OF 2004

Hariprasad Bhusal ..Applicant

Vs.

State of Maharashtra & Anr. ...Respondents

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Mr. K.D.Thomas Advocate for Applicant
Mr. Y.S.Shinde, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 11,2005

P.C.

1. The applicant has preferred this application for leave to appeal against the judgment and order dated 29.5.2003 passed by the learned M.M. 26th Court, Borivali (W) Mumbai in C.C.No. 48/S/1992. This application has been preferred by the complainant in the said case against the acquittal of original accused no.1 i.e. respondent no.2 in the said case. By the said judgment and order, the learned Magistrate convicted the original accused

no.2 for the offence under section 323 of IPC and acquitted the said accused under section 427 of IPC. However, the learned Magistrate acquitted the original accused no.1 i.e. respondent no.2 of the offence under Sections 323 and 427 of IPC. Being aggrieved by the said order of acquittal, the present application for leave to appeal has been preferred.

2. I have heard the learned advocate for the applicant. I have perused the judgment and order of the learned Magistrate as well as the record pertaining to the present case. After carefully considering the matter, I am of the opinion that no interference is called for in the order of the Magistrate acquitting the accused.

3. According to the complainant, three incidents had taken place. The said incidents took place on 30.11.1992, 12.12.1992 and the last incident took place on 18.1.1993. As far as the incident on 12.12.1992 is concerned, the complainant has admitted that in his written complaint filed in the Court there is no whisper about the alleged incident dated 12.12.1992. So also the complainant

on being confronted in respect of the incident dated 30.11.1992 he has admitted that there is an omission in relation to the said incident. In such case only one incident remains i.e. the incident dated 18.1.1993.

4. As far as the incident dated 18.1.1993 is concerned, according to the complainant, meeting had been called by Respondent i.e. accused no.1 and in the said meeting, accused no.1 proposed the name of accused no.2 for the post of President of their community. The complainant opposed this, whereupon the accused no.2 attacked the complainant and gave him fist blows breaking his spectacles and caused him injuries on his nose. It is pertinent to note that the complainant has not attributed any role to accused no.1 in respect of the assault or in respect of breaking his spectacles. The complainant has not stated anywhere that accused No.1 caught hold of him while accused no.2 gave him fist blows and/or that accused no.1 gave him fist blow and/or assaulted him in any manner.

5. The learned advocate for the applicant has

placed reliance on the evidence of the complainant wherein he has stated that on three occasions accused no.1 obstructed him from meeting the Priest i.e. Father Ralf Fernandes. However, it may be noted that the said statement by the complainant in his examination in chief has been admitted to be an omission. Thus, in my view, no capital can be made out of the said averment of the complainant in his examination-in-chief. The learned advocate for the application has placed reliance on this piece of evidence to support his contention that the respondent-accused shared the common intention with accused no.2. As stated earlier, the said piece of evidence is an omission hence, it cannot be relied.

6. On going through the entire evidence of the complainant I find that there is no material to show that the accused no.1 shared the common intention of accused no.2. All these aspects have been taken into consideration by the learned Magistrate while acquitting the accused no.1. The view taken by the learned Magistrate is a reasonable and possible view. It is well settled that if the view of acquittal could have been

reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C. Anthony,** the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view hence, no interference is called for. Hence, leave to appeal is rejected.

[V.K.TAHILRAMANI,J.]